

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL PEMBERTON *et al.*,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC,

Defendant.

Case No.: 14-CV-1024-BAS(WVG)

**SCHEDULING ORDER
REGULATING DISCOVERY
AND OTHER PRE-TRIAL
PROCEEDINGS**

Pursuant to Rule 16.1(d) of the Local Rules, a Case Management Conference was held on October 23, 2018. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing, **IT IS HEREBY ORDERED:**

1. Counsel shall refer to the Standing Order for Civil Cases for the Honorable Cynthia Bashant and the Civil Chambers Rules for the Honorable William V. Gallo, both of which are accessible on the Court's website at www.casd.uscourts.gov.

2. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed by **November 21, 2018**.

3. On or before **June 13, 2019**, all parties shall exchange with all other parties a list of all expert witnesses expected to be called at trial to present evidence under Federal Rule of Evidence 702, 703, or 705. The list shall include the name, address, and phone

1 number of the expert and a brief statement identifying the subject areas as to which the
 2 expert is expected to testify. The list shall also include the normal rates the expert charges
 3 for deposition and trial testimony. On or before **June 27, 2019**, any party may supplement
 4 its designation in response to any other party's designation so long as the party
 5 supplementing its expert designation has not previously retained an expert to testify on that
 6 subject.

7 4. Each expert witness designated by a party shall prepare a written report to be
 8 provided to all other parties no later than **July 18, 2019**, containing the information
 9 required by Fed. R. Civ. P. 26(a)(2)(B).

10 5. On or before **August 1, 2019**, any party, through any expert designated, shall
 11 in accordance with Fed. R. Civ. P. 26(a)(2)(D)(ii), supplement any of its expert reports
 12 regarding evidence intended solely to contradict or rebut evidence on the same subject
 13 matter identified in an expert report submitted by another party.

14 **Except as provided in paragraph 5, below, any party that fails to make these
 15 disclosures shall not, absent substantial justification, be permitted to use evidence or
 16 testimony not disclosed at any hearing or at the time of trial. In addition, the Court
 17 may impose sanctions as permitted by Fed. R. Civ. P. 37(c).**

18 6. If a party has made a disclosure under Rule 26(a), and "learns that in some
 19 material respect the disclosure or response is incomplete or incorrect, and if the additional
 20 or corrective information has not otherwise been made known to the other parties during
 21 the discovery process or in writing," the party must supplement or correct its disclosure or
 22 response in a "timely manner," pursuant to Fed. R. Civ. P. 26(e)(1).

23 7. All discovery pertaining to facts shall be completed on or before **May 23,**
 24 **2019.** All discovery pertaining to expert witnesses shall be completed on or before **August**
 25 **15, 2019.**

26 "Completed" means that all discovery under Rules 30-36 of the Federal Rules of
 27 Civil Procedure must be initiated a sufficient period of time in advance of the cut-off date,
 28 so that it may be completed by the cut-off date, taking into account the times for services,

1 notice, and response as set forth in the Federal Rules of Civil Procedure, **and any motions**
 2 **and the resolution of any discovery disputes.** All disputes concerning discovery shall be
 3 brought to the attention of the Magistrate Judge no later than thirty (30) days following the
 4 date upon which the event giving rise to the discovery dispute occurred. Counsel shall
 5 meet and confer pursuant to the requirements of Fed. R. Civ. P. 26 and Local Rule 26.1(a).

6 8. All motions for class certification shall be filed on or before **September 13,**
 7 **2019.**

8 All motions, other than motions to amend or join parties, for class certification, or
 9 motions *in limine*, shall be filed on or before **December 20, 2019.**

10 Any *Daubert* motions shall be filed along with motions for summary judgment
 11 unless no motions for summary judgment will be filed, in which case the parties may file
 12 *Daubert* motions along with motions *in limine*.

13 Motions will not be heard or calendared unless counsel for the moving party has
 14 obtained a motion hearing date from the law clerk of the judge who will hear the motion.

15 **Be advised that the period of time between the date you request a motion date and**
 16 **the hearing date may be up to sixty (60) days. Please plan accordingly.** Failure of
 17 counsel to timely request a motion date may result in the motion not being heard.

18 Briefs or memoranda in support of or in opposition to any pending motion shall not
 19 exceed twenty-five (25) pages in length without leave of the judge who will hear the
 20 motion. No reply memorandum shall exceed ten (10) pages without such leave of court.

21 9. Pursuant to Local Rule 7.1.f.3.c, **if an opposing party fails to file opposition**
 22 **papers in the time and manner required by Local Rule 7.1.e.2, that failure may**
 23 **constitute a consent to the granting of a motion or other request for ruling by the**
 24 **Court.** Accordingly, all parties are ordered to abide by the terms of Local Rule 7.1.e.2 or
 25 otherwise face the prospect of any pretrial motion being granted as an unopposed motion
 26 pursuant to Local Rule 7.1.f.3.c.

27 10. A Mandatory Settlement Conference shall be conducted on **June 21, 2019**, at
 28 **9:00 a.m.** in the chambers of Magistrate Judge William V. Gallo. Counsel shall submit

1 settlement statements **directly to chambers** no later than **June 10, 2019**. Each party's
 2 settlement statement shall set forth the party's statement of the case, identify controlling
 3 legal issues, concisely set out issues of liability and damages, and shall set forth the party's
 4 settlement position, including the last offer or demand made by that party, and a separate
 5 statement of the offer or demand the party is prepared to make at the settlement conference.
 6 **Settlement conference briefs shall not be filed with the Clerk of the Court, but may**
 7 **be served on opposing counsel at the party's discretion. Settlement conference briefs**
 8 **shall comply with the undersigned's Chambers Rules.** The parties shall meet and confer
 9 in good faith prior to the Mandatory Settlement Conference, and verify that they have done
 10 so in their respective Mandatory Settlement Conference statements, outlining the substance
 11 of their discussions and negotiations.

12 Pursuant to Federal Rule of Civil Procedure 16 and Local Civil Rule 16.3, all named
 13 Plaintiffs, named Defendants, claims adjusters for insured defendants, and if a named
 14 Plaintiff or Defendant is a corporation, partnership, or other entity, a representative of that
 15 entity, with full and unlimited authority¹ to negotiate and enter into a binding settlement,
 16 as well as the principal attorney(s) responsible for the litigation, must be present and must
 17 be prepared to discuss in good faith, the facts of the case, the law that governs the legal
 18 issues in the case, and to resolve the case at the Settlement Conference. Sanctions may
 19 issue against a party and/or attorney who does not proceed as noted above. Retained
 20 outside corporate counsel shall not appear on behalf of a corporation as the party who has

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 22
 23 ¹ “Full authority to settle” means that the individuals at the settlement conference must be
 24 authorized to fully explore settlement options and to agree at that time to any settlement
 25 terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d
 26 648 (7th Cir. 1989). The person needs to have “unfettered discretion and authority” to
 27 change the settlement position of a party. *Pitman v. Brinker Int'l, Inc.*, 216 F.R.D. 481,
 28 485-86 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement
 authority to attend the conference includes that the person's view of the case may be altered
 during the face to face conference. *Id.* at 486. A limited or a sum certain of authority is
 not adequate. *Nick v. Morgan's Foods, Inc.*, 270 F.3d 590 (8th Cir. 2001).

1 the authority to negotiate and enter into a settlement. For good cause, and on ex parte
2 application at least one week before the scheduled settlement conference, Magistrate Judge
3 Gallo may excuse a party or representative from personal attendance provided such party
4 or parties will be available by telephone during the conference. Failure to attend the
5 conference or participate in good faith or obtain proper excuse will be considered grounds
6 for sanctions. Counsel seeking to reschedule a Settlement Conference must first confer
7 with opposing counsel. The Court will consider formal, written *ex parte* requests to
8 continue a Settlement Conference when extraordinary circumstances exist that make a
9 continuance appropriate. In and of itself, having to travel a long distance to appear at the
10 Settlement Conference is not an extraordinary circumstance.

11 11. The parties must comply with the pretrial disclosure requirements of Fed. R.
12 Civ. P. 26(a)(3) no later than **March 9, 2020**. **Please be advised that failure to comply**
13 **with this section or any other discovery order of the Court may result in the sanctions**
14 **provided for in Fed. R. Civ. P. 37, including a prohibition on the introduction of**
15 **experts or other designated matters in evidence.**

16 12. In jury trial cases before the Honorable Cynthia Bashant, neither party is
17 required to file Memoranda of Contentions of Fact and Law pursuant to Civil Local Rule
18 16.1.f.2.

19 13. Counsel shall confer and take the action required by Local Rule 16.1.f.4.a on
20 or before **March 16, 2020**.

21 14. Counsel for the Plaintiff(s) must provide opposing counsel with the proposed
22 pretrial order for review and approval and take any other action required by Local Rule
23 16.1.f.6.a on or before **March 23, 2020**.

24 15. The proposed pretrial order shall be lodged with the district judge's chambers
25 on or before **March 30, 2020**, and shall be in the form prescribed in Local Rule 16.1.f.6.

26 16. The final Pretrial Conference is scheduled on the calendar of the **Honorable**
27 **Cynthia Bashant** for Monday, **April 13, 2020** at **11:00 am**.

28 17. All motions *in limine* are due no later than **April 27, 2020**.

18. All responses to the motions *in limine* are due no later than **May 11, 2020**.

19. The parties shall submit the following no later than May 11, 2020: (1) joint proposed jury instructions; (2) proposed verdict form; (3) *voir dire* questions; and (4) statement of the case.

20. The parties shall exchange final exhibit and witness lists no later than June 2, 2020.

21. A hearing for motions *in limine* is scheduled for Monday, June 1, 2020 at 10:30 am.

22. The trial in this matter shall commence on Tuesday, June 16, 2020 at 9:00 am.

23. The dates and times set forth herein will not be modified except for good cause shown.

24. Plaintiff's counsel shall serve a copy of this order on all parties that enter this case hereafter.

IT IS SO ORDERED.

DATED: October 24, 2018


Hon. William V. Gallo
United States Magistrate Judge